

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

|                       |   |   |
|-----------------------|---|---|
| <b>In Re SRBA</b>     | ) | <b>Subcases: See Attached Exhibit A</b> |
|                       | ) |   |
| <b>Case No. 39576</b> | ) | <b>ORDER GRANTING MOTIONS TO</b>        |
|                       | ) | <b>FILE LATE OBJECTION IN SUBCASES</b>  |
|                       | ) | <b>51-11921, 51-11925, and 51-11936</b> |
|                       | ) |   |
|                       | ) | <b>REPORT AND RECOMMENDATION</b>        |
|                       | ) | <b>THAT MOTIONS TO FILE LATE</b>        |
|                       | ) | <b>OBJECTIONS IN REMAINING</b>          |
|                       | ) | <b>SUBCASES BE DENIED</b>               |

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**Appearances:**

Craig Pridgen and Richard Harris, representing C.E. Brackett Cattle Co., Bert Brackett, Brackett Ranches Ltd., and Brackett Livestock, Inc.

Larry Brown, representing the United States Department of Interior, Bureau of Land Management.

David Barber, Deputy Attorney General, for the State of Idaho.

**I.**

**PROCEDURAL BACKGROUND**

On August 6 and August 9, 1999, Bert Brackett, Brackett Livestock, Inc., Brackett Ranches Ltd., and C.E. Brackett Cattle Co. (hereinafter the (“Bracketts” or “Brackett entities”), filed numerous *Ex Parte Applications to File Late Objections to Claims* to the 88 water right claims listed on Exhibit “A” attached hereto. The Bracketts contemporaneously lodged Standard Form 1 Objections, stating the reasons for their objections. The water right

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claims involved are claims made by the United States, Bureau of Land Management, for stockwater sources located on federal grazing allotments. The Bracketts hold grazing permits or leases and graze cattle on these grazing allotments.

On January 20, 2000, the United States filed a *Memorandum in Opposition to Bracketts' Ex Parte Applications to File Late Objections to Claims*. On February 8, 2000, the Bracketts filed a reply brief thereto.

The matter was heard in open Court on February 9, 2000. On February 10, 2000, the Special Master issued an *Order Setting Deadlines* with respect to the submission of affidavits and additional briefing by the parties.

On April 3, 2000, the State of Idaho lodged the *State of Idaho's Sur-Reply to Bracketts' Reply Memorandum and State's Motion to Participate*, together with the *Affidavit of Peter J. Ampe*. On May 1, 2000, the United States lodged a *Sur-Reply Memorandum*, and the *United States' Memorandum Regarding I.R.C.P. 15, 55, and 60*.

A status conference was held on the matter on January 12, 2001.

## II.

### UNDERLYING BASIS AND PROCEDURAL POSTURE OF THE CLAIMS

#### A. STATE BASED, RESOLVED BY STIPULATION

As to the water right claims listed immediately below, the following applies: The United States filed claims pursuant to state law (beneficial use) only. On December 3, 1997, the State of Idaho filed timely objections thereto, objecting only to the claimed priority date and stating: "The priority date for the claimed right should be no earlier than June 28, 1934." These subcases, along with numerous others, were consolidated for purposes of summary judgment only, the lead subcase being 51-04031. On June 30, 1998, Special Master Haemmerle issued an *Order Granting Motion for Summary Judgment and Denying Cross-Motion for Summary Judgment, (Consolidated Subcases 51-04031, 55-04072, 61-04057, and 72-11767) ("Summary Judgment Order")*, holding that the priority date should be decreed as June 28, 1934 (i.e. the date of the passage of the Taylor Grazing Act). On July 22, 1998, the United States filed a *Motion to Alter or Amend*, which was denied by Special Master

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Haemmerle on August 24, 1998. On September 4, 1998, the United States filed a *Notice of Challenge*, which was denied by Judge Hurlbutt on November 23, 1998.

On August 10, 1999, while the consolidated subcases were proceeding on the United States' *Motion to Alter or Amend*, the State of Idaho and the United States filed a *Stipulation to Resolve Subcases* ("*Stipulation*") in some, but not all of the subcases consolidated within 51-04031. In the *Stipulation*, the parties agreed that the claims should be decreed as recommended by IDWR, with the exception that the priority date should be June 28, 1934. The *Stipulation* also recited that it was intended to be "in the nature of a Standard Form 5." IDWR concurred in the *Stipulation*. As noted above, the Bracketts filed their *Ex Parte Applications to File Late Objections to Claims* on August 6, and 9, 1999.

Whereas the claimant and the only objector had stipulated to the elements of these water right claims, and IDWR had concurred therein, the standard procedure in the SRBA would have been for the Special Master to issue a report and recommendation based upon the *Stipulation*. Indeed, this is what happened with respect to the water right claims that were subject to the *Stipulation* to which the Bracketts did not attempt to file a late objection. Therefore, these water right claims had been fully litigated and but for the Bracketts *Ex Parte Applications to File Late Objections to Claims*, partial decrees would have been issued by the Court in due course.

|          |           |           |          |
|----------|-----------|-----------|----------|
| 51-11884 | 51-11886  | 51-11888  | 51-11890 |
| 51-11891 | 51-11892  | 51-11915  | 51-11919 |
| 51-11928 | 51-11931  | 51-11933  | 51-11939 |
| 51-11941 | 51-11945  | 51-11959  | 51-12012 |
| 51-12090 | 51-12347A | 51-12347B | 51-12348 |
| 51-12352 | 51-12353B | 51-12360  | 51-12369 |
| 51-12375 | 51-12377  | 51-12383  | 51-12437 |
| 51-12438 | 51-12449  | 51-12460  | 51-12484 |
| 51-12485 | 51-12491  | 51-12495  | 51-12501 |
| 51-12503 | 51-12504  | 51-12508  | 51-12511 |
| 51-12515 | 51-12516  | 51-12517  | 51-12543 |
| 51-12823 | 51-12826  | 51-12439  | 51-12440 |

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## **B STATE BASED, RESOLVED ON CHALLENGE**

As to this category of state based claims, the procedural history outlined immediately above is applicable, with the exception that the State of Idaho and the United States did not enter into any stipulations with respect to these claims. Nevertheless, these claims were included within the consolidated subcases that were decided on challenge by Judge Hurlbutt on November 23, 1998. Therefore, these claims too had been fully litigated, and but for the Bracketts *Ex Parte Applications to File Late Objections to Claims*, partial decrees would have been issued by the Court in due course.

|          |          |          |          |
|----------|----------|----------|----------|
| 51-11955 | 51-11969 | 51-11971 | 51-11972 |
| 51-11974 | 51-11975 | 51-11976 | 51-11979 |
| 51-12013 | 51-12349 | 51-12350 | 51-12372 |
| 51-12374 | 51-12433 | 51-12434 | 51-12436 |
| 51-12442 | 51-12443 | 51-12448 | 51-12499 |
| 51-12502 | 51-12715 | 51-12079 |          |

## **C. DUAL BASED CLAIMS, STATE’S OBJECTION RESOLVED BY STIPULATION**

The posture of state-law based portion of the claims in this category is essentially the same as described in subsection B immediately above, i.e. Judge Hurlbutt ruled that the priority date cannot be earlier than June 28, 1934. As to the federal (PWR 107) basis of these claims, the State of Idaho and the United States filed a *Stipulation to Resolve Objections to Certain Claims Based Upon Public Water Reserve No. 107* (filed August 10, 1999) (“*Stipulation Re: PWR 107*”). Therein, the parties agreed that the PWR 107 portion of the dual-based claims, which were described as being tributary to “sinks” in the Director’s Reports or federal abstracts, are valid federal reserved water rights and may be decreed. The parties also stipulated that upon partial decrees being entered pursuant to the PWR-107 basis of the claim, the United States will forego its claim to the state-law basis of the claim. Obviously, IDWR’s concurrence in this *Stipulation Re: PWR 107* is not a concern due to the fact that IDWR does not investigate federal reserve water right claims.

Accordingly, the PWR 107 basis of these claims is still at issue before this Special Master. Apparently, what remains to be accomplished with respect to the PWR 107 basis of the claims is that the requirements of Idaho Code § 42-1411A must be satisfied. This appears

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to be the position of the United States as well. *See Memorandum on Procedures for Resolving State of Idaho's Objections to Federal Reserved Water Right Claims Based on PWR 107*, Subcase 72-11767, 51-04031, 55-04072, 61-04057 (filed by the United States on October 19, 1998). Therefore, although the State's objections to the federal reserve basis of the water right claims listed below have been fully litigated, further proceedings need to be conducted with respect to the requirements of I.C. § 42-1411A.

|          |          |          |          |
|----------|----------|----------|----------|
| 51-11907 | 51-11911 | 51-11950 | 51-11980 |
| 51-12088 | 51-12091 | 51-12108 | 51-12114 |
| 51-12117 |          |          |          |

#### **D. DUAL BASED CLAIMS, STATE'S OBJECTION PENDING**

The dual-based claims in this category were not included in the aforementioned *Stipulation Re: PWR 107*, i.e. the source of water was not described as being tributary to "sinks." However, Judge Burdick's recent *Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights); Order of Recommitment to Special Master Cushman* (December 28, 2001) would appear to be directly implicated with respect to the State's objections regarding the "tributary" issue under PWR 107. That being said, it appears that the State has an outstanding objection to these three PWR 107 claims that does not involve the "tributary" issue decided by Judge Burdick in his December 28, 2001 decision. *See Domestic and Stockwater Right Objection filed October 23, 1998.*

|          |          |          |  |
|----------|----------|----------|--|
| 51-11921 | 51-11925 | 51-11936 |  |
|----------|----------|----------|--|

#### **E. CLAIMS FOR WHICH PARTIAL DECREES HAVE BEEN ISSUED**

Partial Decrees have been issued for the water right claims in this category. The Bracketts filed motions to set aside partial decrees, which was the subject of an *Order Denying Motion to Alter or Amend*, subcases 51-2283 *et al.*, filed March 12, 2002. Therefore, the Bracketts' motions with respect to these four claims has been disposed of in a separate proceeding.

|          |          |          |          |
|----------|----------|----------|----------|
| 51-02283 | 51-12376 | 51-12451 | 51-12452 |
|----------|----------|----------|----------|

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## **F. CLAIM FOR WHICH BRACKETTS HAVE FILED A TIMELY OBJECTION**

Water right claim number 51-12711 was not reported in the domestic and stockwater Director's Report for Basin 51, but rather it was reported in the irrigation and other Director's Report for Basin 51. The objection period expired on March 31, 1999. The Bracketts timely filed objections on that date. Accordingly, the Bracketts withdrew their *Ex Parte Applications to File Late Objections to Claims* at the February 9, 2000 hearing.

### **III.**

## **RELEVANT LAW AND LEGAL STANDARDS**

### **A. I.R.C.P. 55(C) STANDARDS**

In the *Order on Motion to Set Aside Partial Decrees and File Late Objections, Subcases 65-7267 et al., (January 31, 2001)(A.L. Cattle)*, the SRBA District Court fully set forth the legal standards for allowing a late objection to be filed in the SRBA. With respect to water right claims for which partial decrees have not been entered, a motion to file a late objection is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. This is the same standard that is used for reviewing late objections. *See AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). The United States reached this same conclusion in its *Memorandum Regarding I.R.C.P. 15, 55, and 60* (May 1, 2000).

In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a "good cause" for untimeliness standard. I.R.C.P. 55(c). The "good cause" standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d at 279 (Ct. App. 1993). The I.R.C.P. 55(c) standard takes into account the following factors:

- 1) whether the default was willful;
- 2) whether setting aside the judgment would prejudice the opponent; and
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

*McFarland*, 123 Idaho at 936, 854 P.2d at 279.

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## **B. MISTAKE OF LAW WITH RESPECT TO THE “GOOD CAUSE” STANDARD**

Idaho Rule of Civil Procedure 55(c) provides for setting aside a default in accordance with I.R.C.P. 60(b). One of the grounds for relief under I.R.C.P. 60(b) is because of mistake. However, a mistake sufficient to allow setting aside a default judgment must be one of fact and not law. *Hearst Corp., v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979).

## **C. MERITORIOUS DEFENSE STANDARD**

The legal standard of what must be shown to satisfy the meritorious defense requirement has been discussed several times by the Idaho Appellate Courts. *See McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993); *Hearst Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979); *Thomas v. Stevens*, 78 Idaho 266 (1956). The meritorious defense standard requires that a movant:

- 1) allege facts,
- 2) which if established,
- 3) would constitute a defense to the action, and
- 4) the facts supporting the defense must be detailed.

The detailed factual requirement also goes beyond the mere general notice requirement that would ordinarily be sufficient if pled prior to default. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). The policy behind pleading a meritorious defense is founded on the doctrine that “it would be an idle exercise for a court to set aside a default judgment if there is in fact no justifiable controversy.” *McFarland*, 123 Idaho at 934, 854 P.2d at 277 (quoting *Hearst Corp.*, 100 Idaho at 12, 592 P.2d at 68).

## **D. THE STANDARD APPLIED TO *PRO SE* LITIGANTS**

The Bracketts are currently represented by counsel. However, at the time the objections were due, the Bracketts were apparently acting *pro se* regarding the filing of claims and objections in the SRBA. The general rule in Idaho is that *pro se* litigants are held to the same standards and rules as those represented by attorneys. *Ade v. Batten*, 126 Idaho 114, 118, 878 P.2d 813, 817 (Ct. App. 1994) (citing *Golay v. Loomis*, 118 Idaho 387, 393, (1990);

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*Golden v. Condor, Inc. v. Bell*, 112 Idaho 1086, 739 P.2d 385 (1987)). In *Schraufnagel v. Quinowski*, 113 Idaho 753, 747 P.2d 775 (Ct. App. 1987), the Idaho Court of Appeals appeared to apply a more liberal standard under Rule 60(b) for a *pro se* litigant, but ultimately concluded:

What constitutes excusable neglect or just how a reasonable [sic] prudent person should act under similar circumstances are comparative terms and the decisions as to when a default and a default judgment may be set aside and answer permitted, may appear at times to be somewhat in conflict. . . . **Each case must be examined in light of the facts presented, and the circumstances surrounding the same.**

. . .

In doubtful cases, the general rule is to incline toward granting relief from the default and bring about a judgment on the merits.

*Id.* (quoting *Orange Transportation Co. v. Taylor*, 71 Idaho 275, 280-81, 230 P.2d 689, 692-93 (1951)). Accordingly, the standard is the same for *pro se* litigants as well as for those represented by counsel. Ultimately, each case rises and falls on its own particular set of circumstances. One of the factors to take into consideration is that the SRBA also presents its own unique circumstances in that a significant number of the parties to the SRBA appear *pro se*. To otherwise give special consideration to a *pro se* litigant in determining whether or not to allow late objections to be filed seriously impairs the administration and progress of the SRBA.

#### **E. CONSIDERATION FOR DECIDING A CASE ON THE MERITS**

The standards for setting aside a default and setting aside a default judgment both take into account the preference for having a case decided on its merits. In making the determination, the Court must take into consideration that judgments by default are not favored and that the general rule in doubtful cases is to grant relief from the default in order to reach a judgment on the merits and that procedural rules other than those which are jurisdictional should be applied to promote disposition on the merits. *Reeves*, 102 Idaho at 272, 629 P.2d at 668 (citing *Hearst Corp. supra*). This is a factual determination and is discretionary with the Court. *Johnson*, 104 Idaho at 732, 662 P.2d at 1176.

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## F. SRBA NOTICE PROCEDURES

The SRBA District Court recently ruled on the constitutionality of the notice procedures utilized in the SRBA in its *Memorandum Decision and Order on Motion to Set Aside Partial Decrees, Subcases 55-02373 et al.*, (“*LU Ranching Decision*”), which is currently on appeal to the Idaho Supreme Court. In that decision, Judge Burdick provided a lengthy analysis of the notice procedures that have been specifically set up for the SRBA, and found them to be adequate with respect to the due process requirements of the United States and Idaho Constitutions, both facially and as applied to the particular facts of those subcases. The facts involved in the instant subcases are similar to the facts involved in the *LU Ranching Decision*.

## IV. ISSUES PRESENTED

The Bracketts appear to be asserting two separate grounds for relief with respect to their *Ex Parte Applications to File Late Objections*. First and foremost, the Bracketts are seeking relief under the standard set forth in I.R.C.P. 60 (b)(4). In his *Reply Memorandum*, counsel for the Bracketts states:

The Bracketts and their related entities, however, are not seeking relief under provisions of Rule 60(b)(1) [mistake, inadvertence, surprise, or excusable neglect]. The Bracketts and their related entities are seeking relief under provisions of Rule 60(b)(4) and based upon fundamental Federal and State Constitutional provisions with respect to due process particularly in cases involving the adjudication of valuable property rights.

*Reply Memorandum* at 4. However, at the February 9, 2000 hearing on the matter, counsel for the Bracketts backed off this position, and stated:

So in addition to the constitutional arguments, I think we do have the potential here and the opportunity, if the court wishes to seize upon it, to address what is set forth in rule 60(b)(1), which is the inadvertence and mistake provisions. We mentioned it, Mr. Brown mentioned it. I think in my reply brief I may have indicated that, you know, if that’s the only basis that we can

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cut through and find relief, we certainly would not object to a finding on that basis.

*Transcript*, p. 70, ln. 25 to p. 71, ln. 9.

## V.

### FINDINGS AND DISCUSSION

#### A. CONSTITUTIONAL DUE PROCESS ISSUE

1. Brackett Ranches Ltd. is the claimant of water rights 51-02220 and 51-02221, which were reported in the *Director's Report for Domestic and Stockwater, Reporting Area 6, IDWR Basin 51*, filed July 31, 1997 (“*D&S Director's Report, Basin 51*”). The *Notice of the Director's Report, Reporting Area 6 (IDWR Basins 51, 55, and 61) for Domestic and Stock Water Rights* (“*Notice of Director's Report*”) was served by mail upon Brackett Ranches, Ltd. See, *Affidavit of Service: Notice of Director's Report for Domestic and Stockwater for Reporting Area 6 (IDWR Basins 51, 55, and 61)*, at Exhibit 3 to the United States’ *Memorandum in Opposition*.

2. The *Notice of Director's Report* and the accompanying letter informed Brackett Ranches, Ltd., of the time period in which it had to file objections to any water right claims reported in the *D&S Director's Report, Basin 51*, including those claims made by the United States. The *Notice of Director's Report* also included information as to where the entire *D&S Director's Report, Basin 51* could be found, and the procedure for filing an objection.

3. Bert Brackett is a general partner of Brackett Ranches, Ltd. *Affidavit of Bert Brackett*, subcases 51-2283, 51-12376, and 51-12451 (March 15, 2000) (“*Bert Brackett Affidavit*”). Bert Brackett is a shareholder of Brackett Livestock, Inc. *Bert Brackett Affidavit*. Bert Brackett is president of Brackett Livestock, Inc. *Affidavit of Peter J. Ampe*, subcases 51-2289 *et al.*, (April 3, 2000) (“*Ampe Affidavit*”) at Exhibit B. Brackett Ranches, Ltd., and Brackett Livestock, Inc., share the same mailing address. *Ampe Affidavit*, at Exhibits A and B.

4. The notice provided to Brackett Ranches, Ltd., is imputed to Bert Brackett, individually, and Brackett Livestock, Inc. See, *Williams v. Continental Life & Accident Co.*, ,

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100 Idaho 71, 72-73, 593 P.2d 708 (1979); *Claris v. Oregon Short Line Railroad Co.*, , 56 Idaho 169, 174-175, 51 P.2d 217 (1935).

5. Such notice cannot be imputed to the C.E. Brackett Cattle Co., as there is no evidence in the record to demonstrate any interlocking agents or director's with either Brackett Ranches, Ltd., or Brackett Livestock, Inc.

6. All four Brackett entities involved herein have filed timely claims in the SRBA, and therefore are parties to the adjudication as defined in AO1 § 2(q). *See State of Idaho's Sur-Reply Memorandum* at p. 4-5. The Brackett entities are not claiming that they did not receive adequate notice of the commencement of the SRBA.

7. The SRBA Court's receipt and filing of the *D&S Director's Report, Basin 51* was reported on the Docket Sheet filed August 7, 1997, at p. 17.

8. The notice provided to Brackett Ranches, Ltd., Brackett Livestock, Inc., and Bert Brackett via the *Notice of Director's Report* constitutes adequate notice of the filing of the United States' claims at issue herein. *See LU Ranching Decision*.

9. The notice provided to all four of the Brackett entities involved herein via the August 7, 1997 Docket Sheet constitutes adequate notice of the filing of the United States' claims at issue herein. *See LU Ranching Decision*.

## **B. I.R.C.P. 55(C) "GOOD CAUSE" ISSUE**

1. With respect to the first factor under I.R.C.P. 55(c) "good cause" standard discussed above, i.e. whether the default was willful, the Special Master finds that Bert Brackett, Brackett Ranches, Ltd., and Brackett Livestock, Inc., acted willfully in the sense that Bert Brackett made a conscientious decision regarding stockwater claims in Basin 51. Specifically, in his affidavit, Bert Brackett states: "Due to the fact that I had knowledge that the adjudication as it related to Basin 51 was substantially down on the list, and that stockwater claims are all intended to be "de minimus", I decided I could wait and see what the outcome of the early adjudications involving other basins would be and specifically with respect to stockwater claims." *Bert Brackett Affidavit* at p. 2. Bert Brackett does not state the basis for his belief that the stockwater claims in Basin 51 would be "substantially down on the

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list” (apparently meaning that stockwater claims in Basin 51 would be reported by IDWR at some unspecified later date). Therefore, it cannot be determined if this belief was reasonable.

2. With respect to the second factor under the I.R.C.P. “good cause” standard, which focuses on the prejudice to the opponent, the Special Master find that the United States would be significantly prejudiced if the Bracketts were allowed to file late objections at this stage in the proceeding (with the exception of the three subcases noted below). This is due to the posture of the subcases as it was on the date the Bracketts filed their motions. As is fully set forth in section II of this decision, the State’s objections regarding the state-law basis of the claims have been fully resolved. With respect to the federal reserve basis of the claims, and all that remains to be accomplished by the United States is to satisfy the requirements of Idaho Code § 42-1411A for those dual-based claims for which the State’s objection has been resolved by stipulation. *See* section II (C), *supra*.

3. As to the water right claims listed in section II(D) herein, it is the understanding of this Special Master that the State still has outstanding objections to the PWR 107 basis of the claims that remains to be litigated. Therefore, with respect to water right claims 51-11921, 51-11925, and 51-11936, this Special Master finds that the United States will not be significantly prejudiced by allowing the Bracketts to file late objections to the PWR 107 basis for the claims. It should be noted that “Exhibit A” to the Bracketts late objections lodged in these subcase includes an objection to any federal reserve water right claims.

4. With respect to the consideration of whether the Bracketts have set forth a sufficiently detailed meritorious defense to support their late objections, this Special Master finds that the alleged facts, if established, would constitute a valid objection to the water right claims at issue herein. Furthermore, the alleged facts are sufficiently detailed to meet the requirements of I.R.C.P. 60(b).

## VI.

### CONCLUSION AND RECOMMENDATION

The *LU Ranching Decision* is dispositive of Bracketts’ argument that they did not receive adequate notice under the due process provisions of the United States Constitution and

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the Constitution of the State of Idaho, and accordingly the Bracketts' motions on this basis should be denied.

With respect to the Bracketts' argument under I.R.C.P. 55(c), this Special Master recognizes that whether to allow the Bracketts into these subcases at this stage of the proceeding is a matter of discretion. In weighing the factors discussed above, and particularly in light of the significant prejudice to the United States that would result in having to litigate water right claims which have already been subject to lengthy proceedings, it is **recommended** that the Bracketts' *Ex Parte Applications to File Late Objections to Claims* be **denied** in all of the subject subcases except 51-11921, 51-11925, and 51-11936.

The Bracketts' *Ex Parte Applications to File Late Objections to Claims* filed in subcases 51-11921, 51-11925, and 51-11936 is **granted, but only as to the PWR 107 basis for the claim.**

Dated \_\_\_\_\_

\_\_\_\_\_  
Thomas Cushman  
Special Master  
Snake River Basin Adjudication

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## CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTIONS TO FILE LATE OBJECTION IN SUBCASES 51-11921, 51-11925 AND 51-11936; REPORT AND RECOMMENDATION THAT MOTIONS TO FILE LATE OBJECTIONS IN REMAINING SUBCASES BE DENIED was mailed on \_\_\_\_\_ with sufficient first-class postage to the following:

Director of IDWR  
PO Box 83720  
Boise, ID 83720-0098

U.S. Department of Justice  
Environment & Natural Resources Div.  
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Boise, ID 83724

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Deputy Clerk

**ORDER GRANTING MOTIONS TO FILE LATE OBJECTION IN SUBCASES 51-11921, 51-11925, and 51-11936**

**REPORT AND RECOMMENDATION THAT MOTIONS TO FILE LATE OBJECTIONS IN REMAINING SUBCASES BE DENIED**

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